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 8 *Nevada Department of Corrections*

9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 KELLY KOERNER,
 12 Plaintiff,
 13 v.
 14 KENNETH WILLIAMS
 15 Defendants.

Case No. 3:24-cv-00209-ART-CLB

**ORDER GRANTING MOTION TO
 EXTEND TIME TO FILE STIPULATION
 TO DISMISS**

16 Interested Party Nevada Department of Corrections, by and through counsel, Aaron
 17 D. Ford, Nevada Attorney General, and Rudolf M. D'Silva, Deputy Attorney General,
 18 respectfully submit this status report regarding a settlement agreement the parties
 19 entered into on February 18, 2025.

20 **I. BACKGROUND**

21 Plaintiff Kelly Koerner (Koerner) filed a *pro se* civil rights lawsuit under 42 U.S.C.
 22 § 1983. ECF No. 6 at 1. Koerner is currently in the custody of the Nevada Department of
 23 Corrections (NDOC) at Northern Nevada Correctional Center (NNCC). Exhibit A – Bed
 24 History Report at 1. During the screening process, pursuant to 28 U.S.C. § 1915A(a), the
 25 court allowed Koerner to proceed on an Eighth Amendment deliberate indifference to
 26 serious medical needs claim against Defendant Williams. ECF No. 5 at 6:3-5.

1 On February 18, 2025, Koerner and Interested Party NDOC (Parties), participated
 2 in an Early Inmate Mediation Conference (EMC) which was set by this Court. *See generally*
 3 ECF No. 10; *See also* ECF No. 13. A settlement was reached between the parties. ECF No.
 4 13. Upon reaching this settlement, the Deputy Attorney General (DAG) who represented
 5 the Interested Party the NDOC (Defendant) unexpectedly left the division. On March 28,
 6 2025, undersigned counsel submitted a notice of change of DAG. ECF No. 16.

7 Pursuant to the terms of the settlement agreement, forty-five (45) days from the date
 8 the Parties entered the settlement agreement, NDOC is required to file a Stipulation and
 9 Order to Dismiss, or, alternatively, if the terms of the settlement have not been completed,
 10 a Status Report. Exhibit A – Settlement Agreement at ¶6. If a Status Report is filed, it
 11 must inform the Court as to what terms are yet to be completed, along with an explanation
 12 as to why they have not yet been completed and when NDOC anticipates the outstanding
 13 terms will be completed. *Id.*

14 **II. STATUS REPORT**

15 Due to the sudden departure of the DAG who participated in settling this case at the
 16 EMC, and the recent appearance of undersigned counsel on this case, Defendant has not
 17 had the opportunity to fully verify whether all the terms of this settlement agreement have
 18 been satisfied. *See* ECF No. 16. The pertinent terms of the Parties' settlement agreement
 19 are as follows:

- 20 (1) NDOC and Plaintiff have agreed to no monetary terms.
- 21 (2) NDOC agrees to contact a Certified Ophthalmologist
 within thirty (30) days to schedule a consultation as soon as the
 Ophthalmologist has an appointment available. Any treatment
 will be pursuant to NDOC policy and at the recommendation of
 the specialist.
- 22 (3) Further, Plaintiff will be provided with an expedited MRI
 on his back and neck. If further treatment is necessary, such
 treatment will be performed according pursuant to NDOC
 regulations and procedures. If an outside appointment is
 approved, Plaintiff may request Dr. Vacca, review the MRI
 report, but any decisions regarding treatment will be made
 according to the policies and procedures of NDOC.

(4) Plaintiff may kite his caseworker to request a corner bunk in his current placement. The Office of the Attorney General will contact the case worker to recommend the placement, however, there is no guarantee of a move or the placement.

Ex. B at 1¶1-4.

Undersigned counsel has confirmed paragraphs one and four have been satisfied by the NDOC. Upon contacting NNCC's medical department, the OAG was informed that the staff capable of verifying whether the terms set out in paragraphs two and three of the settlement agreement were satisfied was not currently available. Undersigned counsel was informed that such staff will likely be available on Monday, April 7, 2025, and to follow up with the facility then. Undersigned counsel plans on following up with NNCC to verify if the terms set out in paragraphs two and three have been satisfied in the week of April 6, 2025. Should it be discovered that these terms have not been satisfied, NDOC will work towards having the terms of this settlement agreement satisfied by May 4, 2025.¹

DATED this 4th day of April, 2025.

AARON D. FORD
Attorney General

By: /s/ Rudolf M. D'Silva
RUDOLF M. D'SILVA (Bar No. 16227)
Deputy Attorney General
Attorneys for Defendants

IT IS SO ORDERED.

DATED: April 7, 2025

UNITED STATES MAGISTRATE JUDGE

¹ The settlement agreement entered into by the Parties provides: "Unless the Court orders otherwise, NDOC must file another Status Report within thirty (30) days of the filing of any Status Report in the case, or the Stipulation and Order to Dismiss must be filed." Ex. B at 1-2 ¶6. Furthermore, the settlement agreement states, "if there is a delay in completing the terms of the Settlement Agreement, the Parties agree that a motion to enforce will not be filed until after the time frames described in Paragraph 6 have been fully expired." *Id.* at 2¶7.